



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/553,310

10/14/2005

Hans-Peter Weitzel

WAS0728PUSA

1716

22045

7590

08/20/2009

BROOKS KUSHMAN P.C.

1000 TOWN CENTER

TWENTY-SECOND FLOOR

SOUTHFIELD, MI 48075

EXAMINER

EGWIM, KELECHI CHIDI

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

08/20/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/553,310

**Applicant(s)**

WEITZEL ET AL.

**Examiner**

Dr. Kelechi C. Egwim

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/18/2009 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 9, from which the balance of the claims depend, now recites "a water-redispersible polymer powder composition comprising consisting essentially of a) homo- or copolymers ..., and one or more protective colloids, and optionally, one or more antiblocking agent(s), and b) one or more accelerant compounds ...". However, it is

unclear how the antiblocking agent(s) can be both "essential" and "optional" in the powder composition. The process using the indefinite composition is thus indefinite.

5. Also, claims 18 and 19 each, respectively, claim the water-redispersible polymer powder composition in claim 9 to "consists essentially of" or "consists of" a vinyl acetate and ethylene copolymer stabilized by polyvinyl alcohol protective colloid. However, claim 9 requires the presence of at least the accelerant in the water-redispersible polymer powder composition.

Thus, there is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 9-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Hilton et al., for reasons cited in the previous action.

8. Claims 9-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Schad, for reasons cited in the previous action.

**Claim Rejections - 35 USC § 103**

9. Claims 9-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz et al. (USPN 6,350,808) in combination with Hilton et al. or Schad, for reasons cited in the previous action.

***Response to Arguments***

10. Applicant's arguments filed 06/18/2009 have been fully considered but they are not persuasive.

11. Firstly, it is noted that, contrary to applicant's arguments, the "consisting essentially of" language does not modify the polymers under "a)" in claim 9, but rather the entire redispersible powder composition in claim 9.

12. Regarding Hilton and Schad, the fact that Hilton or Schad may not recite that their dry compositions are redispersible is inconsequential. The compositions are being re-dispersed in water in Hilton and Schad.

13. Regarding the accelerant in Hilton, 0.1% to 20% of accelerant with up to 12% of the powdered polymer is consistent with 3 to 20% of the accelerant, based on the weight of the powdered polymer.

14. Also, with regard to Hilton and Schad, the "weight" of the redispersible powder composition is indefinite as its composition in the claims is indefinite (see above).

15. Regarding the use of partially acetalized polyvinyl alcohols in Schmitz, no description is found in the originally filed specification defining "consisting essentially of" as excluding the partially acetalized polyvinyl alcohols. These are still polyvinyl alcohols consistent with the broad meaning given them in the specification as originally filed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (571) 272-1099. The examiner can normally be reached on M-T (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dr. Kelechi C. Ekwim/  
Primary Examiner, Art Unit 1796

KCE